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25 *Attorneys for Defendants*  
26 Cox Communications, Inc.; CoxCom, LLC; and  
27 Cox Communications California, LLC

28  
17 UNITED STATES DISTRICT COURT  
18  
19 CENTRAL DISTRICT OF CALIFORNIA

20  
21 ENTROPIC COMMUNICATIONS,  
22 LLC,

23 Plaintiff,

24 v.

25 COX COMMUNICATIONS, INC.;  
26 COXCOM, LLC; and COX  
27 COMMUNICATIONS CALIFORNIA,  
LLC,

Defendants.

Case No. 2:23-cv-01049-JWH-KES

**COX COMMUNICATIONS, INC.,  
COXCOM, LLC, AND COX  
COMMUNICATIONS  
CALIFORNIA, LLC'S NOTICE  
OF AMENDED  
COUNTERCLAIMS AND  
OPPOSITION TO ENTROPIC'S  
MOTION TO DISMISS**

**DEMAND FOR JURY TRIAL**

1 COX COMMUNICATIONS, INC.,  
2 COXCOM, LLC, AND COX  
3 COMMUNICATIONS CALIFORNIA,  
LLC,

3 Counter-Claimants,

4 v.

5 ENTROPIC COMMUNICATIONS,  
6 LLC; MAXLINEAR  
7 COMMUNICATIONS LLC; AND  
MAXLINEAR, INC.

8 Counter-Defendants.

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1 Defendants and Counter-Claimants Cox Communications, Inc., CoxCom,  
 2 LLC, and Cox Communications California, LLC (collectively “Cox”) oppose  
 3 Plaintiff and Counter-Defendants Entropic Communications, LLC’s (“Entropic”)  
 4 Motion to Dismiss Cox’s counterclaims under Fed. R. Civ. Pro. 12(b)(6). (Dkt. 163-  
 5 1, the “Motion”). Cox opposes the grounds on which Entropic moved.

6 As detailed below, while there is no merit to Entropic’s Motion, Cox has  
 7 elected to moot same by filing amended counterclaims that further address the issues  
 8 Entropic raises as well as facts uncovered via further discovery. *See* Cox’s Answer  
 9 and Defenses to Complaint and First Amended Counterclaims (“Amended  
 10 Counterclaims”). Cox submits its Amended Counterclaims pursuant to Fed. R. Civ.  
 11 Pro. 15(a)(1)(B), which states that a party may amend its pleading once as a matter of  
 12 course, “if the pleading is one to which a responsive pleading is required” and the  
 13 amendment is no later than “21 days after service of a motion under Rule 12(b), (e),  
 14 or (f).” Cox’s counterclaim is a pleading to which a responsive pleading is required,  
 15 Cox has not before amended its pleadings as of right before submitting this  
 16 amendment, and Cox’s amendment is submitted within 21 days after service of the  
 17 Motion. *See, e.g., Bauer Bros. LLC v. Nike, Inc.*, No. 09cv500-WQH-BGS, 2010 WL  
 18 4569893, at \*2 (N.D. Calif. Nov. 5, 2010) (“Nike filed its Amended Counterclaims,  
 19 less than 21 days after Bauer filed the pending Motion to Strike and Dismiss” and  
 20 “pursuant to Rule 15(a)(1), Nike was not required to seek leave of Court to file the  
 21 Amended Counterclaims.”).

22 Cox demonstrates below that, while Cox’s existing pleadings suffice despite  
 23 Entropic’s contrary arguments, the Amended Counterclaims that are based upon  
 24 further discovery obtained in this action address, and moot, all the points Entropic  
 25 raises.

26 ***Entropic’s Rule 12 Arguments:*** Contrary to Entropic’s assertions (ECF No.  
 27 163-1, at 11-17), Cox’s existing counterclaims fully identified the contract,  
 28 applicability of the contract, Cox’s status and performance as an intended third-party

1 beneficiary, and Entropic's acts that induced breach or disruption of the contract and  
 2 caused damage and injury to Cox. (ECF No. 89, at ¶¶ 284-96, 299-303).

3 Entropic first urged that Cox fails to plead it is an intended beneficiary of the  
 4 DOCSIS License and therefore fails to plead a valid contract for its counterclaim of  
 5 tortious interference. (ECF No. 163-1, at 10-11). This is incorrect, as Cox's original  
 6 counterclaims pled sufficient facts identifying Cox's status as an intended third-party  
 7 beneficiary to the DOCSIS License Agreement. (E.g., ECF No. 89, at ¶¶ 287-90).  
 8 Further, Entropic incorrectly asserts that Cox fails to allege it is an intended  
 9 beneficiary based on provisions in the DOCSIS License Agreement that are  
 10 inapplicable to Cox. (ECF No. 163-1, at 11). Nonetheless, the Amended  
 11 Counterclaims at ¶¶ 287, 294-98, 302-03, 310-18 further detail facts concerning the  
 12 above points and establishing relevant injuries, including additional facts revealed  
 13 following discovery.

14 Entropic then incorrectly asserted Cox's counterclaims are not viable because  
 15 they do not affirmatively allege any asserted patent is essential to practice the  
 16 DOCSIS specifications. (ECF No. 163-2, at 11-13). Cox disagrees, particularly given  
 17 the averments Plaintiff set forth in the Complaint, which Cox points to in the original  
 18 counterclaims. (ECF No. 89, at ¶¶ 299-300). Cox nonetheless amended its pleading  
 19 to further address this point and provide further averments concerning these points  
 20 and related breaches. (Amended Counterclaims, at ¶¶ 306-07). Entropic's viability  
 21 argument is accordingly both incorrect and moot.

22 Entropic next claimed that Cox failed to show a legally cognizable harm. (ECF  
 23 No. 163-1, at 13-14). Cox's counterclaims already plausibly demonstrated that  
 24 Entropic's inducement of MaxLinear's breaches created a void assignment and  
 25 deprived Cox of the benefits of the DOCSIS License Agreement and caused it to incur  
 26 the expense of defending this case that would not otherwise have been brought. (ECF  
 27 No. 89, at ¶¶ 286-290, 291, 294-296, 307-308, 311-13). Nonetheless, the Amended  
 28

1 Counterclaims at ¶¶ 303, 310-318, 336-38 further detail facts establishing relevant  
 2 injuries, including additional facts revealed following discovery.

3 Finally, Entropic incorrectly argued that Cox's counterclaims do not allege acts  
 4 by Entropic sufficient to plausibly claim Entropic induced MaxLinear to breach the  
 5 DOCSIS License Agreement. (ECF No. 163-2, at 15-17). Cox's original  
 6 counterclaims included averments plausibly demonstrating Entropic's awareness of  
 7 the DOCSIS License Agreement and MaxLinear's obligations thereunder and  
 8 induced MaxLinear to breach those obligations through its assignment of the Asserted  
 9 Patents. (E.g., ECF No. 89, ¶¶ 286-290, 291, 294-296, 307-308, 311-13). Based upon  
 10 additional discovery, however, Cox's Amended Counterclaims, including in ¶ 296-  
 11 98, 302-03, 310-318, further supplement these aspects of its claims and identify  
 12 additional bases for concluding that Entropic improperly induced MaxLinear to  
 13 breach the DOCSIS License Agreement.

14 Accordingly, the Amended Counterclaims both fully address and moot  
 15 Entropic's positions on the adequacy of Cox's tortious interference claim.

16 \* \* \*

17 The Motion is without merit. Independently, it is moot as a matter of law  
 18 because the Amended Counterclaims are the only operative pleading. *See Ramirez v.*  
 19 *County of San Bernardino*, 806 F.3d 1002, 1008 (9<sup>th</sup> Cir. 2015) ("Plaintiff's Second  
 20 Amended Complaint superseded the First Amended Complaint, and the First  
 21 Amended Complaint ceased to exist. Because the Defendants' motion to dismiss  
 22 targeted the Plaintiff's First Amended Complaint, which was no longer in effect, we  
 23 conclude that the motion to dismiss should have been deemed moot"); *Phillips v.*  
 24 *County of Riverside*, No. 5:20-cv-01266, 2023 WL 4290379, at \*1 (C.D. Cal. May  
 25 12, 2023) ("Because Defendants' Motion to Dismiss targeted Plaintiff's SAC, which  
 26 is no longer in effect, Defendants' Motion to Dismiss is moot"); *Bauer*, 2010 WL  
 27 4569893, at \*2 (denying motion to dismiss amended counterclaims because "[o]nce

1 filed, an amended pleading supersedes the original pleading in its entirety.”) (citation  
2 omitted).

3 Finally, even if Cox did not have the option to exercise its amendment as of  
4 right, the amendments Cox has made are appropriate and allowable under controlling  
5 authority. Rule 15(a)(2) states that “[t]he court should freely give leave [to amend]  
6 when justice so requires.” There is a strong public policy in favor of permitting  
7 amendment, and the Ninth Circuit has made clear that “Rule 15’s policy of favoring  
8 amendments to pleadings should be applied with ‘extreme liberality.’” *Bowles v.*  
9 *Reade*, 198 F.3d 752, 757 (9th Cir. 1999). The Court has already found that Cox had  
10 good cause and acted with diligence in presenting its original motion to amend, and  
11 that justice required adding Cox’s counterclaims. (ECF No. 86, at 3). Entropic says  
12 nothing to undercut those findings and, accordingly, there is no justification for its  
13 request to preclude any amendment.

14 Accordingly, Cox requests the Court deny the Motion.

15 Dated: January 9, 2024

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